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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,027	07/16/2003	Nai-Kong V. Cheung	#639-B-PCT-US	2089

7590 07/13/2005

Law Offices of Albert Wai-Kit Chan, LLC  
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Whitestone, NY 11357

EXAMINER
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JOHNSON, JASON H

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/621,027

Applicant(s)

CHEUNG, NAI-KONG V.

Examiner

Jason H. Johnsen

Art Unit

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 67-119 is/are pending in the application.
- 4a) Of the above claim(s) 89-119 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 67-88 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on N/A is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/16/05.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Information Disclosure Statement*

The information disclosure statement (IDS) submitted on 5/16/2005 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner is considering the information disclosure statement.

1. The amendments filed on March 31, 2005 and June 28, 2005 have been received, entered and carefully considered. The amendment affects the instant application accordingly:
  - (A) Comments regarding office action have been provided drawn to:
    - (i) Objection to the specification, which has been withdrawn in view of applicant's amendments;
    - (ii) 102(b) rejection of claims 67, 80, 82-85 by James et al., has been maintained;
    - (iii) 103(a) rejection of claims 68-79, and 83, by James et al, Dorothee Herlyn, Yan et al., Dante J. Marciani, Cheever et al., Chu et al., and Lane et al. has been maintained;
    - (iv) 112, second rejection of claims 67, and 68-87, has been withdrawn in view of applicant's amendments;
    - (v) 103(a) rejection of amended claims 81 and newly presented claim 88, by James et al, Dorothee Herlyn, Yan et al., Dante J. Marciani, Cheever et al., Chu et al., and Lane et al.; of record, and necessitated by amendment.
    - (vi) 112, second rejection of claims 67, 81, 86, 87, and 88, necessitated by amendment.
    - (vii) withdrawal of claims 89-119 a being drawn to an invention divergent from the invention originally presented
2. Claims 67-119 are pending in the case.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.

Maintaining 102(b) rejection

Claims 67, 80, and 82-85, which are rejected under 102(b) by James et al. has been maintained. The amendments to these claims filed on March 31, 2005 and June 28, 2005 are not seen to obviate the rejection mailed on December 17, 2004. The statement in independent claim 67, "capable of enhancing efficacy of an antibody," and subsequent clarification of the antibody to be "foreign to the immune system of the host;" these limitations are given no patentable weight and are not seen to further limit the composition claim. Additionally, the only component of the composition is the glucan. An antibody is not explicitly part of the composition; rather, the statements of intended use of the glucan, ie. enhancing efficacy of an antibody, is given no patentable weight and is not a component of the composition. As it stands, the only component of the composition is the glucan, which comprises a 1,3 beta backbone with mixed linkages. However, the phrase, "with mixed linkages," can be reasonably interpreted to refer to either linkages in the backbone itself, or linkages that branch off from the backbone. Therefore, the glucan taught by James et al. satisfies this limitation.

Maintaining 103(a) rejection

Claims 68-79, and 83, which are rejected under 103(a) by James et al, Dorothee Herlyn, Yan et al., Dante J. Marciani, Cheever et al., Chu et al., and Lane et al. has been maintained. These claims are maintained for the same reason as the 102(b) rejection outlined above. The amendments to the claims inserting statements of intended use for the glucan are given no patentable weight. Additionally, the statement further defining the glucan to have mixed linkages can be reasonably interpreted to include branched glucan as taught by the prior art references cited on the record.

***Withdrawal of claims 89-119***

Newly submitted claims 89-119 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The newly presented claims contain glucan and an antibody, wherein the antibody governs the classification of the invention, classified in class 436/547.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 89-119 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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Claims 81 and 88 are rejected under 35 U.S.C. 103(a) by James et al, Dorothee Herlyn, Yan et al., Dante J. Marciani, Cheever et al., Chu et al., and Lane et al.; of record. Claims 81 and 88 contain the same problem as the independent claim from which it depends; namely the language "mixed linkages" can reasonably be interpreted to include 1,3 beta backbone glucans with branches, which is taught by the prior art of record.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 67, 81, and 88 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the following reason(s): The limitation of "mixed linkages" found in these claims is indefinite and ambiguous. These limitations can be reasonably interpreted to mean a 1,3 beta backbone with either branched chains coming off the backbone itself, or mixed linkages within the backbone itself.
2. Claims 86 and 87 are rejected under 35 U.S.C. 112, second paragraph, because claims that depend from an indefinite claim are also indefinite if they fail to obviate the reason the claim(s) from which they depend are rejected.

**Conclusion**

All claims are rejected.

**THIS ACTION IS MADE FINAL** as necessitated by amendment. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

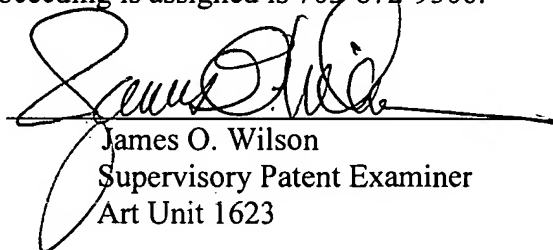
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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Jason H. Johnsen** whose telephone number is **571-272-3106**. The examiner can normally be reached on Mon-Friday, 8:30-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James O. Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Jason H. Johnsen  
Patent Examiner  
Art Unit 1623



James O. Wilson  
Supervisory Patent Examiner  
Art Unit 1623